

persons, having violated the fundamental law and having withdrawn himself out of this Kingdom has abdicated the Government, and that the throne is hereby vacant."

Proceeding further, this eminent jurist says:

"For whenever a question arises between the society at large and any magistrate vested with powers originally delegated by that society it must be decided by the voice of the society itself; there is not upon earth any other tribunal to resort to. And that these consequences were fairly deduced from these facts our ancestors have solemnly determined in a full parliamentary convention representing the whole society."

Further quoting from Blackstone, he says:

"They held that this misconduct of King James amounted to an endeavor to subvert the constitution and not to an actual subversion or total dissolution of the Government, according to the principles of Mr. Locke, which would have reduced the society almost to a state of nature; would have leveled all distinctions of honor, rank, offices, and property; would have annihilated the sovereign power, and in consequence have repealed all positive laws, and would have left the people at liberty to have erected a new system of State upon a new foundation of polity. They therefore very prudently voted it to amount to no more than abdication of the Government and a consequent vacancy of the throne, whereby the Government was allowed to submit to the exercise of the executive magistracy, and the king's office to remain though King James was no longer King. And thus the constitution was kept entire, which upon every sound principle of government must otherwise have fallen to pieces had so principle and constituent a part as the royal authority been abolished or even suspended."

"This single postulate, the vacancy of the throne, being once established the rest that was then done followed almost of course. For, if the throne be at any time vacant (which may happen by other means besides that of abdication, as if all the blood-royal should fail, without any successor appointed by Parliament)—if, I say, a vacancy, by any means whatsoever, should happen, the executive magistracy of this vacancy seems naturally to result to the Lords and Commons, the trustees and representatives of the nation. For there are no other hands in which it can so properly be intrusted; and there is a necessity of its being intrusted somewhere, else the whole frame of government must be dissolved and perish."

The principle on which this decision in regard to the abdication of King James II rests is still stronger when it is applied to persons who are citizens of the United States but who reside in Hawaii, and by the constitution and laws of Hawaii are admitted into an active participation in the conduct of government, both as officeholders and as qualified electors. If they, in connection with the native or naturalized subjects of the Kingdom of Hawaii, unite in demanding the preservation of their constitutional rights, there should be no captious or technical objections taken to the assertion of that right, or to the manner of its exercise.

In reference to all citizens of the United States residing in Hawaii and not actual members or officers of that Government, the spirit of our laws, in accordance with the principles of the Constitution and the traditions of the people, should be applied to their protection, when it is the duty of the United States to protect them, and especially are they entitled to the full advantage of the protection that is afforded under that doctrine of personal liberty and security which upholds the authority of governments *de facto*. When such a government arises out of alleged abuses and grievances and is set up in good faith by the intelligent classes to succeed a monarchy in a state that is the only monarchy in a sisterhood of many republics, the rules governing its recognition are not those that seem to control in cases where the state is a sole republic surrounded by an environment of monarchies.

In Europe, where governmental successions have no relation to the will of the people, every presumption that can be made to support the royal system is adopted and enforced with rigid care. Old conditions are presumed to exist in a royal government until the new government has accomplished a complete revolution and until nothing remains to be done to secure an uninterrupted and unembarrassed installation of its authority. Those presumptions are all in favor of the crown and are easily applied in practical use, as the crown is a political unit and acts with certainty in the assertion of its claims. When the rights asserted against the crown are set up by the people, or for the people, the act is necessarily a representative act, and the authority of the alleged representative is severely questioned. Indeed, it is not considered as existing in European countries until, through bloodshed or an overwhelming exhibition of force, its acknowledgment is literally compelled. The reverse of this rule should obtain in that part of the world where it is held, universally, that the right to govern depends upon the consent of the governed and not upon the divine inheritance of power. In a controversy like that in Hawaii the presumption is in favor of those who unite to assert the constitutional rights of the people, that they are acting in good faith, and that they are not seeking personal aggrandizement, but the good of the people. When such a popular movement engages the evident support of those whom the people have trusted for integrity to an extent that inspires a just confidence of success a sufficient foundation exists, at least, for a government *de facto*; and it is no more necessary to its validity that every possible obstacle to its final success has been removed than it would be necessary, on the other hand, to the permanency of the crown that every rebellious subject of the Queen had been slain or banished and their estates had been confiscated.

The supporters of Liliuokalani seem to be enforced into the attitude of claiming that it is no consequence that she may have forfeited her right to the crown and had placed in the power of the people lawfully to claim that this was an abdication, unless the people had overcome and removed every vestige of her power before they proclaimed the Provisional Government. Her known purpose to press

the absolute powers claimed by her in the new constitution to the extent of the banishment or death of the white population seems not to be permitted to excuse the action of the people in displacing her, if they had not captured her small force of policemen and soldiers before the American minister had recognized the Provisional Government.

Liliuokalani did not seem to take this narrow view of the revolution she had inaugurated.

The banishment or death of the white people and the confiscation of their estates was the final decree recorded in the Queen's heart and mind, as she freely stated to Minister Willis, and until this cruel work had been accomplished she held that her policy of revolution would be a failure. There is some ground for hope that these were not her sincere purposes or wishes but that in giving expression to them she was "playing a part." As opposed to such purposes, or to a Queen who could imagine them in the presence of the constitutional protection given to the rights and liberties of the people throughout this hemisphere, Americans should not hesitate in the support of a government *de facto*, set up to oppose a formal surrender of a place where a few soldiers and policemen had been stationed, who were powerless to hold against the people their arms. It was an act of mercy to her and her retainers that they were not forced into the commission of acts of violence. An interregnum existed in the executive Government of Hawaii, which was caused by the effort of the Queen to destroy the constitution of 1887, and by the act of the people in accepting her will for the completed *coup d'état*, and, in making that the occasion for supplying the executive department of the Government with a chief.

A careful investigation has failed to show that any conspiracy now exists that is directed to the virtual displacement of the Provisional Government. The personal efforts of the Queen seem to have been directed toward a provision for a safe and comfortable life, free from the anxiety of office and "the stress of her native subjects." Her power of attorney to Paul Neumann and his mission to the United States indicate a reliance on the "arts of peace" rather than of war for indemnity for the past and security for the future. The opinions, or sentiments, expressed by her in the three interviews she had with Mr. Willis, in which she uttered the severest denunciations against the white race in Hawaii, and declared her willingness, if not her purpose, to confiscate their estates and to banish or to destroy them, while they are a seeming expression of the lofty indignation of an offended ruler, are a queen crowned by a Christian and civilized people, and so out of keeping with her character as a woman who had received kindly recognition and personal regard from other good and refined ladies, that they shock all right-minded people in Christendom. The Government of the United States should willingly forbear to regard these utterances as her official expression of such designs upon the lives and liberties of those whom she would find in her power, upon her restoration to the throne, and accept them as a means adopted by her to convince Mr. Willis that her restoration to the throne was impossible, and was not in accordance with her wishes.

The President, on the first intimations of these harsh declarations of the Queen, at once laid them before Congress, and abandoned the further exercise of his good offices to bring about a reconciliation between her and those who were conducting and supporting the Provisional Government. Mr. Willis, however, regarding his instructions as continuing to require his intercession beyond the point where the President considered that it should cease, held a second and third interview with Liliuokalani. After these interviews had closed, the Queen being still firm in her course, Mr. Carter, a trusted friend, obtained her signature to a pledge of amnesty, and made that the basis of his proposition to Mr. Dele for the abandonment of the Provisional Government, which was summarily refused. This closed that incident. Mr. Willis, in which he did, obeyed what he conceived to be his instructions, and being so distant from Washington, it is a matter of regret, but not of surprise, that there was an apparent want of harmony between his action in continuing his interviews with Liliuokalani after the President had determined that the full duty of the Government had been performed.

The attitude of Liliuokalani at the conclusion of this proceeding is that of waiting for a pleasant retirement from the cares of public life, rather than of waiting for an opportunity to bring about a hostile collision with the people who support the new order of government in Hawaii.

In dealing with a grave subject, now for the first time presented in America, we must consider the conditions of public sentiment as to monarchical government, and we shall derive also material help from the light of English history. In the Western Hemisphere, except as to the colonial relation, which has become one of mere political alliance chiefly for commercial reasons, and does not imply in any notable case absolute subjection to imperial or royal authority, royalty no longer exists. When a crown falls, in any kingdom of the Western Hemisphere, it is pulverized, and when a scepter departs, it departs forever; and American opinion can not sustain any American ruler in the attempt to restore them, no matter how virtuous and sincere the reasons may be that seem to justify him. There have been heathen temples in the older States in this hemisphere where the bloody orgies of pagan worship and sacrifice have crimsoned history with shame, and very recently such temples have been erected in the United States to abuse Christianity by the use of its sacred name and ritual. When the arms of invaders, or mobs of the people, have destroyed these temples no just indignation at the cruelties that may have been perpetrated in their destruction could possibly justify their restoration.

It is a great blessing to this Western World that the nations are to be spared the calamities which Blackstone describes as "imbruing the kingdom of England in blood and confusion," growing out of claims of succession to the crown. In almost every reign prior to

that of the present house of Hanover the lives and property of the people of England, amid the greatest cruelties, have been sacrificed in settling pretensions to the crown. It was these conflicts and this distress of innocent sufferers that caused the people to claim through the judges the protection of the doctrine, that service rendered to the king who held the scepter was lawful, although he was not rightfully in possession of the crown. No greater liberty of the people was ever devised or granted than the right of protection under a king *de facto* against a king *de jure*.

De facto governments, when they seek to supply the gap created by an interregnum, are favored in the international law, and when they are also based on the right of popular government in conflict with royal government, or to prevent its re-establishment, once it has disappeared in a State of the Western Hemisphere, it is so recognized and established in the foundations of the rightful authority to rule that it is justly to be ranked among the cardinal liberties of the people.

This doctrine is not new, and yet it is modern in England, where the right to the crown and its prerogatives have been the people for fifteen centuries. The stringent doctrine that a *de facto* government must be established firmly in all respects before it is entitled to recognition by another sovereign and independent power had no application to the facts and circumstances that attended the recent revolution in Hawaii; moreover, if the revolution there had been directed against the entire government and for the overthrow of the constitution of 1887, and all monarchical rule, if it was a sincere, strong, earnest and successful movement of the people for the recovery of their natural right to rule themselves, they should not be narrowly questioned and held to rigid account for a proper and discreet performance of every act necessary to their resumption of their natural rights, but all America must unite in the declaration that, under such circumstances, the presumption of law should be favorable to such movements, rather than to the establishment of a government by the people of the foundations of their liberties, based upon their right to govern themselves.

The parliament of Hawaii had been prorogued by the Queen on the 14th day of January, and could not be again assembled under the constitution, except by the chief executive authority. Until that authority was supplied in some way, therefore, the Legislature could not be reconvened. It was the establishment of that authority, the chief executive head of the nation, which was the question at issue, and when that was decided an appeal to the Legislature of Hawaii for its confirmation or ratification was not only unnecessary, but might have resulted in a counter-revolution. It was, therefore, in the interest of peace, good order, and right government, that the people of Hawaii, who were unopposed in their process of organizing an executive head for the Government, should proceed to do so as they did, regularly and in an orderly, firm, and successful manner. Thus the abdication of Liliuokalani was confirmed and has so continued from that day to this. The Government of the United States has on various occasions recognized the succession to the executive authority as residing in the Provisional Government initiated at that public meeting at the arsenal and consummated on the 17th day of January by public proclamation. Then, on the 17th day of January, according to the recognition of the United States from which there has been no dissent or departure, the interregnum ceased, and the executive head of the Government of Hawaii was established. Until this was completed, on the 17th day of January, by the proclamation of the Provisional Government, the United States was still charged, under every principle of law and justice, and under the highest obligation of duty, to keep her forces in Honolulu, and to enforce, in virtue of her sovereign authority, the rights of her citizens under the treaty obligations and also under the laws of Hawaii, relating to the safety of person and property and the rights of industry, commerce, and hospitality in their free pursuit and enjoyment. And when the Provisional Government was thus established, it rested with the United States to determine whether the Government of Hawaii was so far rehabilitated and so safely established that these rights of her citizens could be intrusted to her keeping. The recognition of such a state of affairs, within a country whose executive department has been made vacant in consequence of domestic strife, is quite a separate and different proceeding, both in form and effect, from the recognition of the political independence of a government that is complete in its organization. In the latter case the recognition excludes all right of interference in its domestic affairs, while in the former it is the right and duty of supplying the protection of law to the citizen that makes interference necessary as well as lawful.

The independence of Hawaii as a sovereign State had been long recognized by the United States, and this unhappy occasion did not suggest the need of renewing that declaration. The question presented in Honolulu on and after the 13th of January, 1893, was whether the Queen continued to be the executive head of the Government of Hawaii. That was a question of fact which her conduct and that of her people placed in perilous doubt; until it was decided by the proclamation of a new executive. Pending that question, there was no responsible executive government in Hawaii. On the 17th of January that doubt was resolved to the satisfaction of the American Minister, and of all other representatives of foreign governments in Hawaii, in favor of the Provisional Government. This recognition did not give to the Government of Hawaii the legal or moral right to expel the troops of any government, stationed in Honolulu in the period of interregnum, until it had so firmly established its authority as to give to foreigners the security to provide for which these troops had been landed. Good faith and honest respect for the rights of friendly nations would certainly require the withdrawal of all further interference with the domestic affairs of Hawaii as soon as that Government had provided security that was reasonably sufficient for the protection of the citizens of the United States. But the Government of the United States had the right to keep its troops in Honolulu until these conditions were performed, and the Government of Hawaii could certainly acquiesce in such a policy without endangering its independence or detracting from its dignity. This was done, and the troops from the Boston camped on shore for several months. The precise hour when or the precise conditions under which the American Minister recognized the Provisional Government

is not a matter of material importance. It was his duty, at the earliest safe period, to assist by his recognition in the termination of the interregnum, so that citizens of the United States might be safely remitted to the care of that Government for the security of their rights. As soon as he was convinced that the Provisional Government was secure against overthrow it was his duty to recognize the rehabilitated State. Whether this was done an hour or two sooner or later could make no substantial difference as to his rights or duties, if he was satisfied that the movement was safe against reversal. If no question of the annexation of Hawaii to the United States had existed, the conduct of the American minister in giving official recognition to the Provisional Government would not have been the subject of adverse criticism. But the presence of that question and his anxious advocacy of annexation did not relieve him from the duty or abridge his right to call for the troops on the Boston to protect the citizens of the United States during an interregnum in the office of chief executive of Hawaii. They were not to be put into a state of outlawry and peril if the minister had been opposed to annexation, nor could his desire on that subject in any way affect his rights or his duty. He gave to them the protection they had the right to demand, and, in respect of his action up to this point, so far as it related to Hawaii, his opinions as to annexation have not affected the attitude of the U. S. Government, and the committee find no cause of censure either against Minister Stevens or Captain Wilkes, of the Boston.

Afterward, on the 1st day of February, 1893, the American minister caused the flag of the United States to be raised on the Government building in Honolulu, and assumed and declared a protectorate over that nation in the name of the United States. This act on the part of our minister was without authority, and was void for want of power. It was disavowed by Secretary Foster and rebuked by Secretary Gresham, and the order to abandon the protectorate and haul down the flag was in accordance with the duty and honor of the United States. To haul down the flag of the United States was only an order to preserve its honor.

The diplomatic officers of the United States in Hawaii have the right to much larger liberty of action in respect to the internal affairs of that country than would be the case with any other country with which we have no peculiar or special relations. In our diplomatic correspondence with Hawaii and in the various treaties, some of them treaties of annexation, which have been signed and discussed, though not ratified, from time to time, there has been manifested a very near relationship between the two governments. The history of Hawaii in its progress, education, development, and government, and in Christianity, has been closely identified with that of the United States—so closely, indeed, that the United States has not at any time hesitated to declare that it would permit no intervention in the affairs of Hawaii by any foreign government which might tend to disturb the relations with the United States, or to gain any advantage there over the Americans who may have settled in that country. The United States has assumed and deliberately maintained toward Hawaii a relation which is entirely exceptional, and has no parallel in our dealings with any other people.

The justification for this attitude is not a matter with which this inquiry is necessarily connected, but its existence furnishes a good excuse, if excuse is needed, for a very lively concern on the part of our diplomatic representatives in everything that relates to the progress of the people.

The causes that have led to this peculiar situation are altogether apparent. They are in every sense honorable, just, and benevolent. One nation can not assume such an attitude toward another, especially if the latter is, by contrast, small, weak and dependent upon the good will or forbearance of the world for its existence, without giving to it a guaranty of external and internal security.

The attitude of the United States toward Hawaii, thus voluntarily assumed, gives to Hawaii the right to regard it as such a guaranty.

In the absence of a policy to establish a colonial system and of any disposition for territorial aggrandizement, the Government of the United States looked with approbation and gave encouragement to the labors and influence of their citizens in Hawaii in laying the groundwork of a free and independent government, there which, in its principles and in the distribution of powers, should be like our own, and ultimately become republican in form. This has been the unceasing wish of the people of the United States, in which many of the native Hawaiians have participated.

Observing the spirit of the Monroe doctrine, the United States, in the beginning of our relations with Hawaii, made a firm and distinct declaration of the purpose to prevent the absorption of Hawaii or the political control of that country by any foreign power. Without stating the reasons for this policy, which included very important commercial and military considerations, the attitude of the United States toward Hawaii was in moral effect that of a friendly protectorate.

It has been a settled policy of the United States that if it should turn out that Hawaii, for any cause, should not be able to maintain an independent government, that country would be encouraged in its tendency to gravitate toward political union with this country. The treaty relations between Hawaii and the United States, as fixed by several conventions that have been ratified, and by other negotiations, have been characterized by a sentiment of close reciprocity. In addition to trade relations of the highest advantage to Hawaii, the United States has so far interfered with the internal policy of Hawaii as to secure an agreement from that Government restricting the disposal of bays and harbors and the crown lands to other countries, and has secured exclusive privileges in Pearl Harbor of great importance to this Government.

This attitude of the two governments and the peculiar friendship of the two peoples, together with the advantages given to Hawaii in commerce, induced a large and very enterprising class of people from the United States to migrate to those islands and to invest large sums of money in the cultivation of sugar and rice, and in other trade and industry. The introduction of laborers from Japan and China in great numbers gave to the governing power in Hawaii a new and very significant importance, and made it necessary, for the protection of the interest of the white or European people and the natives, that the safeguards of the organic law of the Kingdom should be carefully preserved. In the efforts to

secure these guarantees of safe government, no distinction of race was made as to the native or Kanaka population, but the Chinese and Japanese were excluded from participation in the government as voters, or as officeholders.

Apprehensions of civil disturbance in Hawaii caused the United States to keep ships of war at Honolulu for many years past, almost without intermission, and the instructions that were given to our diplomatic and consular officers and to the naval commanders on that station went beyond the customary instructions applicable to other countries. In most instances, the instructions so given included the preservation of order and of the peace of the country, as well as the protection and preservation of the property and of the lives and treaty rights of American citizens.

The circumstances above mentioned, which the evidence shows to have existed, create a new light under which we must examine into the conduct of our diplomatic and naval officers in respect of the revolution that occurred in Hawaii in January, 1893. In no sense, and at no time, has the Government of the United States observed toward the domestic affairs of Hawaii the strict impartiality and the indifference enjoined by the general law of noninterference, in the absence of exceptional conditions. We have always exerted the privilege of interference in the domestic policy of Hawaii to a degree that would not be justified, under our view of the international law, in reference to the affairs of Canada, Cuba, or Mexico.

[To be continued.]

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